

REMARKS

Claims 10, 11 and 13-25 are pending. Objections were raised to the claims because several of the claims depend from claim "0". Corrections have been made and the Examiner is requested to enter this amendment so that the claims are in better condition for allowance or appeal. All of the claims are finally rejected under Section 102 as anticipated by Pou (U.S. 2005/0004873). Reconsideration is requested in view of the following remarks.

In the prior amendment and response filed 4 December 2008, it was urged that the same rejection under Section 102 of claim 10 did not identify every recited feature. Further, applicants amended the independent claim 10 to further distinguish over the prior art. Specifically, the license database of claim 10 includes

both one or more non-licensed software modules and licensed software modules and license information, the license information resident in the switching device pertaining to each of the software modules ...

The foregoing requires that "the license information resident in the switching device" pertains to both **one or more non-licensed software modules** and **licensed software modules** and this is not what the Pou reference discloses. In contrast to this, although the rejection cites par [0010] of the Pou reference, that same paragraph explains to the reader that a search for information relating to an authorization to access a file can be conducted in a remote server database in response to a determination that a local database **does not include information relating to an authorization** to access the data file. Applicants' claim 10 requires that license information pertaining to non-licensed software be resident in the switching device while the prior art acknowledges that a license database on a local server may not provide information relating to whether there is an authorization, in which case a remote database may be accessed. Thus there is no basis in the Pou reference from which to conclude that license information in a local server will indicate whether one of more software modules are non-licensed.

The rejection again reads the referenced "user device" of Pou as applicants' claimed switching device, although there is no basis for such equivalence. This deficiency has already been presented to the Examiner and the Examiner provides no explanation to justify stretching the meaning of Pou's user device to subtend applicants' "switching device" and there is no equivalence for doing so.

As a third example, with respect to applicants' requirement for connecting a portable medium to the switching device, the Examiner's arguments presented at pages 5 and 6 are not at all pertinent to the issue. The Examiner cannot find any disclosure of "connecting a portable medium to the switching device" and has no authorization to conclude that applicants' arguments or applicants' claimed features do not comply with Section 111(b). The burden is upon the Examiner to present a case for anticipation and the Examiner apparently does not understand that hand waving is not permitted. In fact, it is incumbent upon to the Examiner to demonstrate the presence of every recited feature in the same level of detail as presented in the claims. Since there is no showing of "connecting a portable medium" the final rejection is unduly forcing the applicants to appeal a patently wrong rejection. The argument for doing so is simply misguided.

Similarly, the Examiner has not responded to deficiencies concerning the following features of claim 10:

initiating an interaction between the license database **and the portable data medium** with a cryptographic algorithm to determine whether the storage device and the portable data medium each include matching hardware identification information ...

If the Examiner refuses to remove the rejection then applicants request that the Examiner generate a more complete set of arguments which cite specific sentences and phrases in the prior art to show how every feature recited in the claims is found in the reference. A rejection under Section 102 requires no less than a clear showing of every feature within the single reference. If the Examiner disagrees with this obligation then the Examiner is requested to immediately confer with a supervisor and either provide applicants with that which is requested or to provide a credible basis for departing from office procedures.

Numerous other deficiencies reside in the final rejection but applicants have already provided the Examiner with multiple and sufficient reasons to withdraw the rejection.

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Conclusion

The claims define distinct and non-obvious subject matter. Allowance of the application is requested. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16(c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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